



DEP-3 REF

PATENT  
Customer Number 22,852  
Attorney Docket No. 3438-64-1  
US PATENT & TRADEMARK  
OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Marc H. Schneider

Application No.: 10/700,623

Filed: November 5, 2003

For: Wood Impregnation

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

)  
)  
) Group Art Unit: 1773  
)  
) Examiner: Kevin R. Kruer  
)  
)  
) Confirmation No.: 5372

Sir:

**REQUEST FOR REFUND**

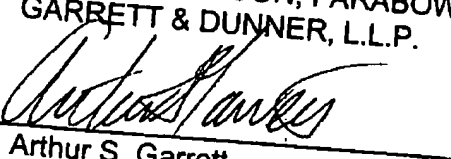
Applicant requests a refund of the \$250.00 fee submitted with the Petition to Revive Abandoned Application Under 37 C.F.R. 1.137(a) on August 8, 2005. The Petition was granted and the Notice of Abandonment was vacated in the Decision on Petition dated September 12, 2005. A copy of the Decision is enclosed.

Please credit the refund to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

By:

  
Arthur S. Garrett  
Reg. No. 20,338

Dated: November 10, 2005

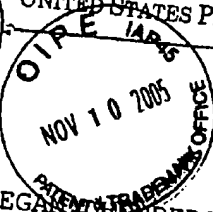
Enclosure

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UNITED STATES PATENT AND TRADEMARK OFFICE



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SEP 12 2005

**OFFICE OF PETITIONS**

In re Application of  
Schneider  
Application No. 10/700,623  
Filed: November 5, 2003  
Docket No.: 3438-64-1

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a) and request to withdraw the holding of abandonment, filed August 8, 2005. This matter is being jointly addressed as a petition to withdraw the holding of abandonment under 37 CFR 1.181 as well as a petition with revive under 37 CFR 1.137(a).

This application was held abandoned January 29, 2005 for failure to timely reply to the Office communication mailed December 28, 2004. The Office communication set a 30 day or one month, whichever is longer, period of time for reply. No extensions of time in accordance with 37 CFR 1.136 were timely requested. Notice of Abandonment was mailed February 12, 2005.

**DECISION UNDER 37 CFR 1.181**

Petitioner asserts non-receipt of the Office communication mailed December 28, 2004.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

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Office records indicate the Office communication was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office communication on the part of the United States Patent and Trademark Office.

In support of the petition, petitioner has provided a copy of the docket record where the Office communication would have been entered had it been received along with a statement from practitioner that a search of the docket record and file jacket indicated that the Office communication was not received.

In view of the evidence submitted, the petition to withdraw the holding of abandonment is hereby GRANTED.

The Notice of Abandonment is hereby VACATED and the holding of abandonment is WITHDRAWN.

DECISION UNDER 37 CFR 1.137(a)

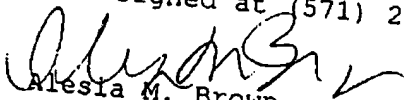
A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

In view of the withdrawal of abandonment, the petition to revive under 37 CFR 1.137(a) is hereby DISMISSED AS MOOT.

Petitioner is entitled to a refund of the previously submitted \$250.00 petition fee and may request a refund by writing to the Finance Office, Refund Branch. A copy of this decision should accompany any request for refund.

The application file is being forwarded to Technology Center 1700 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

  
Alesia M. Brown  
Petitions Attorney  
Office of Petitions

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PAC/\$  
JFW

PATENT  
Customer No. 22,852  
Attorney Docket No. 3438-64-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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March H. Schneider ) Group Art Unit: 1773  
Application No.: 10/700,623 ) Examiner: Kevin R. Kruer  
Filed: November 5, 2003 )  
For: Wood Impregnation ) Confirmation No.: 5372

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PETITION TO REVIVE ABANDONED APPLICATION UNDER 37 C.F.R. 1.137(a)**

Applicant hereby petitions the Honorable Commissioner of Patents and Trademarks to revive the above application and withdraw the holding of abandonment under the provisions of 35 U.S.C. §133 and 37 C.F.R. 1.137(a).

This application was filed on November 5, 2003 as a divisional of application Serial No. 09/761,699, filed January 18, 2001. Abandonment of the application subsequently resulted from applicant's failure to file a response by January 28, 2005 to the Office communication of December 28, 2004. Applicant's failure to do so, however, was unavoidable because the Office communication was never received by applicant or his attorney. Applicant therefore requests revival of the application and withdrawal of the holding of abandonment in view of Delgar, Inc. v. Schuyler, 172 U.S.P.Q. 513 (D.C.D.C. 1971) in which such a remedy was granted under analogous facts.

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Adjustment date: 12/13/2005 SDIRETA1  
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